

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL GORRIO,

Plaintiff,

vs.

CORRECTIONAL OFFICER
FRANCIS, *et al.*,

Defendants.

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) 2:19-cv-1297
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Hon. J. Nicholas Ranjan

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) Magistrate Judge Patricia L. Dodge
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MEMORANDUM ORDER

This *pro se* prisoner civil rights case was referred to Magistrate Judge Patricia L. Dodge for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court applicable to Magistrate Judges.

Currently before the Court is a Report & Recommendation filed by Judge Dodge on May 7, 2021, ECF 92, recommending that the Court grant in part and deny in part Defendants' motion to dismiss and, further, that the Court dismiss three of the individual defendants named in Mr. Gorrio's amended complaint pursuant to the screening provisions of 28 U.S.C. § 1915(e)(2)(B)(ii). The parties were notified that, pursuant to 28 U.S.C. § 636(b)(1), objections to the Report & Recommendation were due by May 24, 2021. ECF 92. Neither party filed objections.

Upon a *de novo* review of the record of this matter and the Report & Recommendation, the Court finds no clear error on the face of the record, and therefore enters the following order:

AND NOW, this **16th day of July, 2021**, it is hereby **ORDERED** that Defendants' motion to dismiss is **GRANTED IN PART** and **DENIED IN PART** as follows:

- (1) The motion is **GRANTED** with prejudice, and without leave to amend, as to all of Mr. Gorrio's official capacity claims, his claims for injunctive relief, and any claim for violation of the Pennsylvania Constitution.
- (2) The motion is **GRANTED** with prejudice, and without leave to amend, as to as to **Counts A, F, O, P, and Q** of Mr. Gorrio's amended complaint;
- (3) The motion is **GRANTED** without prejudice, and with leave to amend, as to **Counts E, G, H, L, and M**.
- (4) The motion is **GRANTED IN PART** and **DENIED IN PART** as to **Count K**. Specifically, the motion to dismiss Count K is **DENIED** as to Defendants Henry, Saxion, Ohrman, Cox, Twardzik, Regina, and Haines, but **GRANTED** without prejudice, and with leave to amend, as to all other Defendants.
- (5) Defendants did not move to dismiss **Counts B, C, D, I, J, and N** insofar as they are asserted against Defendants in their individual capacity, do not seek injunctive relief, and do not assert violations of the Pennsylvania Constitution.

It is **FURTHER ORDERED** that Defendants House, Allen, and Rudzinski are **DISMISSED** from this action pursuant to the screening provisions of 28 U.S.C. § 1915(e)(2)(B)(ii).

It is **FURTHER ORDERED** that Mr. Gorrio may, if he so chooses, file a second amended complaint to attempt to cure the pleading deficiencies with respect to those claims the Court has dismissed without prejudice (**Counts E, G, H, L, M, and part of Count K**). Alternatively, Mr. Gorrio may choose to proceed on his current complaint, but only as to **Counts B, C, D, I, J, and N**. Judge Dodge may, at her discretion, set an appropriate deadline for Mr. Gorrio to file any amended complaint.

It is **FURTHER ORDERED** that Judge Dodge's Report & Recommendation, ECF 92, is **ADOPTED** as the opinion of the Court.

BY THE COURT:

/s/ J. Nicholas Ranjan
United States District Judge